



Article

Divorce, kinship, and errant wives: Islamic feminism in India, and the everyday life of divorce and maintenance

Ethnicities

2021, Vol. 21(3) 454–476

© The Author(s) 2021



Article reuse guidelines:

sagepub.com/journals-permissions

DOI: 10.1177/1468796821999904

journals.sagepub.com/home/etn**Sagnik Dutta** 

Jindal Global Law School, OP Jindal Global University,
Sonapat, Haryana, India; Department of Politics and
International Studies, University of Cambridge,
Cambridge, UK

Abstract

This article is an ethnographic exploration of a women's *sharia* court in Mumbai, a part of a network of such courts run by women *qazi* (Islamic judges) established across India by members of an Islamic feminist movement called the *Bharatiya Muslim Mahila Andolan* (Indian Muslim Women's Movement). Building upon observations of adjudication, counselling, and mediation offered in cases of divorce and maintenance by the woman *qazi* (judge), and the claims made by women litigants on the court, this article explores the imaginaries of the heterosexual family and gendered kinship roles that constitute the everyday social life of Islamic feminism. I show how the heterosexual family is conceptualised as a fragile and violent institution, and divorce is considered an escape route from the same. I also trace how gendered kinship roles in the heterosexual conjugal family are overturned as men fail in their conventional roles as providers and women become breadwinners in the family. In tracing the range of negotiations around the gendered family, I argue that the social life of Islamic feminism eludes the discourses and categories of statist legal reform. I contribute to existing scholarship on Islamic feminism by exploring the tension between the institutionalist and everyday aspects of Islamic feminist movements, and by exploring the range of kinship negotiations around the gendered family that take place in the shadow of the rhetoric of 'law reform' for Muslim communities in India.

Corresponding author:

Sagnik Dutta, Jindal Global Law School, OP Jindal Global University, Sonapat, Haryana, India.

Email: sdutta1@jgu.edu.in

Keywords

Islamic feminism, Muslim personal law, gender, kinship, India

Introduction

In a small office consisting of two rooms situated in a narrow by-lane in Bandra East off the Western Express Highway in Mumbai, Khatun Shaikh, a woman Islamic judge (*qazi*), patiently listened to women's accounts of marital disputes including pleas for divorce. This women's *sharia* court (*shariat adalat*) is part of a network of such alternative dispute resolution forums run by the members of the Indian Muslim Women's Movement (*Bharatiya Muslim Mahila Andolan*), an Islamic feminist movement in India.¹ Perveen, a working-class Muslim woman, approached the *qazi* presiding over the women's *sharia adalat*. She complained of routine domestic violence at home and simply wanted a divorce (*khula*) from her husband. She did not seem bothered about maintenance claims. Her husband was an alcoholic and anyway did not provide for her and her children. She was already working as a domestic help at the time she approached the women's *shariat adalat*. Khatun Shaikh, the female *qazi* who adjudicated claims of marriage, divorce, and maintenance in this *adalat*, wanted to ensure that she had some place to stay and some economic security but did not hesitate as such to facilitate her divorce.

Shaikh is a member of the Indian Muslim Women's Movement (*Bharatiya Muslim Mahila Andolan*, henceforth BMMA), a movement for gender justice in the Muslim family in India, inspired by transnational Islamic feminist ideals. She was trained as a female *qazi* as part of a BMMA initiative that began in 2013. Shaikh acted as a mediator, counsellor, and a sympathetic confidante to women who approached her with marital disputes. Although her legal authority was not formally recognised, she possessed considerable adjudicatory power within the plural legal system of the Indian state. Her pronouncements of divorce were considered authoritative in the surrounding neighbourhoods in Mumbai from which Muslim women litigants of this court came. Shaikh helped women procure a divorce as a way out of unhappy and violent marriages in the women's *shariat adalat*. At the same time, she actively participated in the efforts of the BMMA to codify and standardise Muslim personal law further by lobbying the state to enact legislation.

Activists of the BMMA run women's *shariat adalat* in various cities of India – Mumbai, Dindigul, Kolkata, Ahmedabad – that are meant to challenge the predominance of men in alternative dispute adjudication of Muslim personal law. At the same time, they pursue an agenda of lobbying the state to push for further codification and standardisation of Muslim personal law.² While the everyday interactions between litigants and the woman *qazi* in the women's *sharia adalat* are premised on a failure of the gendered kinship roles and the support structures of a heterosexual family, the BMMA's demands for codification and

standardisation of Muslim family law entrench gendered roles in the family. Building upon participant observation in a *sharia adalat* of the BMMA in Mumbai, this article charts the tensions between the demands of statist legal reform of the BMMA, and the imaginaries of the gendered heterosexual family instantiated in the everyday negotiations on marriage, divorce, and maintenance in the women's *shariat* court. The agenda of statist legal reform pursued by the BMMA resonates with the structure of the conjugal family with well-defined gendered kinship roles where the husband is the provider, and the wife is the recipient of maintenance. In contrast, the interactions in the *sharia adalat*, the claims made by women litigants, and the adjudication and counselling provided by the female *qazi*, are shot through with the possibility of failure of the institution of the family and reversal of gendered kinship roles within this institution.

This paper contributes to the literature on Islamic feminism as I show how the everyday social life of Islamic feminist movements eludes the gendered categories of statist legal reform. Existing literature explores how Islamic feminist movements are invested in challenging and reconstituting Islamic legal authority and reforming Muslim family law (Jones, 2019: 441; Mir Hosseini, 2019: 108; Vatuk, 2013: 358). These movements are seen as an effort to challenge patriarchal readings of the *Quran* and recover its central ethical message as well as discard subsequent misogynist accretions of the *hadith* and the *fiqh* (Jones, 2019: 443).³ In the official discourse of these movements, the message of the *Quran* is translated into a project of codification of a gender-just Muslim personal law (Anwar, 2009: 2; Mir-Hosseini, 2019: 113; Vatuk, 2013: 349). Some anthropologists seek to understand Islamic feminist movements and Islamic reformist movements in general vis-a-vis the networks of power within which they operate (Abu-Lughod, 2013: 176; Mahmood, 2006: 329).⁴ Abu-Lughod contends that there is an incommensurability between the lives of the women these movements seek to represent, and the terms in which they are imagined by these movements (Abu-Lughod, 2013: 187). Abu-Lughod asks: 'How do these new reformist projects, with their construction of women's rights in terms of Islamic law and tradition and the Muslim spirit – yet arising from these women's own social locations in global fields of feminist governance in which elites have a very visible and prominent place – fit with the everyday lives of some ordinary Muslim women in particular communities?' (Abu-Lughod, 2013: 187) In this paper, I build on this line of enquiry to further explore the gap between the institutional, statist demands of law reform, and the everyday social life of an Islamic feminist movement in India.

This tension remains underexplored in the existing scholarship on Islamic feminism and Muslim personal law in India (Jones, 2019; Tschalaer, 2017; Vatuk, 2013). In-depth ethnographic study of the everyday life of the law in women's *sharia* courts in India is rare in existing scholarship. Existing scholarship on the BMMA is focused on their institutional demands for legal reform and the interventions of activists to this end (Jones, 2019; Tschalaer, 2017; Vatuk, 2013). Some recent scholarship has explored women's negotiations with the law in male-run *dar-ul-qazas* in Delhi and Patna (Lemons, 2019; Redding, 2020). However, these

forums are markedly different than the forums of the BMMA as women hold adjudicatory power in the latter; the BMMA's *sharia* courts work avowedly within an Islamic feminist epistemology and are committed to a gender-equitable adjudication of marital disputes that benefits women.

My intervention speaks to existing scholarship that explores the modalities of mediation of marital and family disputes in alternative dispute resolution forums (Grover, 2009; Heitmeyer and Unnithan, 2015; Kowalski, 2016). Several non-state actors and alternative dispute resolution forums, including secular and religious women's organisations are involved in the adjudication and arbitration of marital disputes in India (Solanki, 2011; Vatuk, 2013). Recent scholarship traces how arbitration of marital disputes is shaped by existing kinship networks and ideologies (Kowalski, 2016). Kowalski shows how notions of care for kin and familial order shape mediation of marital disputes offered by family counsellors in a women's rights organisation in Jaipur (2016: 65). Similarly, Grover, in her ethnography of women's local councils (*mahila panchayat*) in Delhi, traces how natal kinship networks shape the mediation of marital disputes for women in arranged marriages (Grover, 2009: 21).⁵ Heitmeyer and Unnithan show how a voluntary association that ostensibly aims at providing legal counsel to women on their reproductive rights also emphasizes informal negotiations with kin networks, neighbourhood relations, and local state functionaries to secure women's welfare (Heitmeyer and Unnithan, 2015: 384). In this paper, I advance this scholarship by drawing out how gendered kinship and the family is conceptualised in an alternative dispute resolution forum within an Islamic feminist ethical framework. While existing scholarship is attentive to interventions by family counsellors and activists in alternative dispute resolution forums, my paper pays closer attention to the everyday negotiations of gendered kinship of women who visit these forums. I carefully trace the reconceptualisation of gendered kinship roles by women in moments of crisis in the heterosexual family in these forums.

The article is divided into four sections. The first section outlines my methodology. The second section provides a brief overview of the history of the BMMA. The third section uses ethnographic observations to bring out how the family is conceptualised by women who approach the court, and the female *qazi* who adjudicates disputes of marriage, divorce, and maintenance as well as provides counsel to these women. In the first subsection, I focus on the practice of male-initiated, oral, unilateral divorce to show how divorce is construed as a necessary end to abusive and violent marriages by women litigants and the *qazi*. In the second subsection, I show the evolving articulations of gender and gendered kinship roles in the claims made by women on the *sharia adalat*. I show how gendered kinship roles are reversed with women taking on the role of breadwinners when gendered expectations in the heterosexual family fail. The fourth section discusses the framing of marriage, divorce, and maintenance in the legislative agenda for legal reform of Muslim personal law advanced by the BMMA. It reflects on how their legislative agenda stands in tension with the imaginaries of gendered kinship and the heterosexual family in the everyday life of the *shariat adalat*.

Methodology

This paper is based on participant observation in a *sharia adalat* in Mumbai which is part of a network of *sharia adalat* run by BMMA, an Islamic feminist movement in India. I worked as an intern with the BMMA and helped in taking notes, filling out forms for litigants, and data entry of cases in the *adalat* for 11 months between October 2017 and September 2018. I attended hearings of all the cases (about 189 according to the BMMA's report that I helped in compiling) that were filed during this period. I observed the interactions between the *qazi* and the women who frequented this space. I took notes during the hearings and discussed the cases with the *qazi* and other members of the BMMA afterwards. On some days of the week, the same space of the *sharia adalat* would be used to debate law reform by members of the BMMA and other women. I sat through these meetings and discussions, took notes, and sometimes recorded these conversations. I accompanied the founder members and the *qazi* of the BMMA to several public gatherings where they spoke about law reform, Islamic feminism, and the function of the female *qazi*. Observations and interactions help in understanding the modalities of negotiations and authority in the *sharia adalat*. They provide better access to the conception of gender and the family that mediate the adjudication of marriage, divorce, and maintenance in the *sharia adalat*. Written documentation in the BMMA's case registers do not provide much insight to how gender and the family were constituted by the woman *qazi* and the litigants. They only record the testimonies of the parties, the final decision of the *qazi*, and details about the income (and hence some indication of the class status) of the women and their husbands. The husbands were employed in the informal economy as drivers, carpenters, mechanics, etc. Most of the women worked as homemakers (at least at the time when they approached the court). A few were employed in the informal economy and earned between Rs 3000–4000 a month (approximately GBP50) working as domestic help, cooks, make-up artists, beauticians, etc. Most of them were not educated beyond high school. This information clearly situates the women within a working class, urban Muslim demographic. Pseudonyms have been used for all the women who approached the *adalat*. Khatun Shaikh, the woman *qazi* in the Mumbai *sharia adalat* of the BMMA, is a well-known public figure and consented to her name being used.

My prior familiarity with activists of the BMMA as a journalist helped me gain access to this space. As a queer, non-binary person, I felt deep empathy for women's marginalisation in the heterosexual family. My location outside the pale of the normative, heterosexual family made me alive to the possibilities of kinship and intimacy that are often elided by normative, statist definitions of the family as a heterosexual unit with gendered reproductive roles. It is these possibilities that I excavate in my study of women's negotiations with gender in the *sharia* courts. My close enmeshment with the lives of the litigants and the women *qazi* in these courts drew me to the range of new subjectivities and intimacies that are forged in moments when marriages fail. As a queer person in a society where

marriage and the heterosexual family exercise a hegemonic hold over social and political imaginaries of gender, I was particularly taken in by how commonplace and systematic the breakdown of marriage was in these spaces. My analytic labour is inspired by the rich body of scholarship that draws out practices of kinship and intimacy outside the pale of the heterosexual family in South Asia (Ramberg, 2013, 2017; Tellis, 2014). Ramberg explores kin-making practices in families in Karnataka which 'exceed gendered kinship norms recognised by the postcolonial state' (Ramberg, 2013: 661). Tellis critiques the predominance of the agenda of gay marriage in the urban, male-dominated queer movement in India which obscures same-sex relationships and intimacies beyond the confines of marriage, family, and kinship (Tellis, 2014: 347).

The BMMA, Islamic feminism, and women's sharia courts in India

The last two decades of the 20th century saw the expansion of an international women's movement following the adoption of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). About the same time, there was an upsurge of Islamist political movements that sought to discredit women's struggles for gender justice (Mir-Hosseini, 2015: 28). A group of thinkers responded to the Islamist challenge and broke new ground in Islamic legal thought (Mir-Hosseini, 2015: 28). These thinkers – including Riffat Hassan, Amina Wadud, and Fatima Mernissi – developed interpretive epistemological theories that focused on 'how religion is understood, how religious knowledge is produced, and how rights are constructed in Muslim legal tradition' (Mernissi, 2003: 8; Mir-Hosseini, 2015: 28; Wadud, 2015: 414). Several initiatives for a transnational advocacy of Muslim women's rights in the late 20th century, were led by 'educated cosmopolitan Muslim women' (Abu-Lughod, 2013: 177). These initiatives build on local movements in Iran, Malaysia, Indonesia, Lebanon, and Egypt. They sought to shape a space of Muslim women's rights that is grounded in their self-understanding as pious persons (Abu-Lughod, 2013: 177). They responded to the Islamic revival but were different than women in several Muslim majority countries who joined Islamist political parties and movements (Abu-Lughod, 2013: 15).⁶ Unlike the piety movements, Islamic feminist movements are explicitly concerned with gender justice, and patriarchy in Islamic legal traditions and Muslim family law (Abu-Lughod, 2013: 15).

The BMMA emerged in the backdrop of the proliferation of several Muslim women's rights networks in the late 20th and early 21st century India which based their struggles for gender justice on a reading of the Quran (Tschalaer, 2017: 56; Vatuk, 2013: 349). These networks and groups include the All-India Muslim Women's Rights Network founded in Mumbai in 1999, *Awaaz-e-Niswaan* founded in Mumbai in 1987, and the All-India Women's Muslim Personal Law Board founded in Lucknow in 2005 (Vatuk, 2013: 349). These Muslim women's networks

and groups are invested in propagating the 'correct teachings' of Islam by recovering the central ethical message of the *Quran*; they devise ways to help women access these teachings (Vatuk, 2013: 349). These groups also call for legal reform and further codification of Muslim Personal Law in keeping with the tenets of the *Quran* (Vatuk, 2013: 349).⁷

The BMMA emerged at a moment of deepening awareness of the marginalisation of Muslim minorities in India and an emergent transnational narrative of Islamic feminism (Jones, 2019: 450). There are two initiatives that constitute BMMA's activism. Firstly, the BMMA is engaged in popularising and advocating for legislation on a draft Bill that seeks further codification of Muslim personal law in India. The statement of objects and reasons for this Bill states that it has been formulated in keeping with the 'human rights framework of the Constitution' and the 'spirit of gender justice' in the Quran (BMMA, 2017: 17). This draft Bill seeks compulsory registration of marriages, sets a minimum age of marriage at 21, prevents polygamy, and bans oral, unilateral divorce by men, known as triple *talaq* in popular parlance. At the same time, it also includes irretrievable breakdown as a ground for divorce and advocates a 'Quranic method of divorce' that is informed by the principle of compassion and includes methods of arbitration (BMMA, 2017: 16). The draft Bill removes arbitrary grounds through which men can divorce women but, at the same time, institutionalises the heterosexual family and state regulation of the same by demanding compulsory registration, state regulation of cultural practices such as polygamy, and unilateral divorce by men.

Secondly, the BMMA has established women *sharia adalat* in several parts of India since 2013 that are run entirely by women. Both *qazi* and other members of the BMMA engaged in the day-to-day functioning of the *adalat* are women. In doing so, the BMMA seeks to challenge the predominance of men in community adjudication forums (*dar-ul-qaza*). Cases in the *sharia adalat* are adjudicated by women who have been trained by the BMMA as *qazi*. The judgments of the *qazi* of the BMMA's *shariat* court and other such alternative dispute resolution forums are not formally recognised in the Indian legal system but they constitute an important aspect of the governance of marriage, divorce, and maintenance of Muslim families within a legal pluralist framework.

As part of an effort to challenge male authority in the alternative dispute resolution forums, the BMMA trains women as Islamic judges (*qazi*) (Jones, 2019). Senior leaders of the BMMA train women *qazi* in various aspects of Muslim personal law including provisions in the Muslim Women's (Protection of Rights on Divorce) Act 1986, the Dissolution of Muslim Marriages Act 1939, sections of the Quranic text that pertain to the marriage, divorce, and maintenance rights of women, various schools of Islamic law as well as the Indian Constitution, and secular statutes that deal with women's rights in India such as the Protection of Women from Domestic Violence Act, 2005. Noorjehan Safia Niaz, one of the founder members of the BMMA, understood this initiative as a profoundly political moment as it involved 'entering the domain hitherto held and closely guarded by Muslim men' (Niaz, 2016: 51). This training is part of an initiative of the

BMMA called *Dar-ul-uloom e Niswan* (Jones, 2019). The training usually includes several sessions of workshops spread over a year culminating in a written and oral examination and mostly caters to Muslim women in these cities from a working-class background. Some of the founder members of the BMMA are urban middle-class Muslim women but most of the women who train as *qazi* are working-class Muslim women who have been active in their neighbourhoods as members of various alternative dispute resolution forums. In 2013, the BMMA inaugurated its first four *shariat* courts in Mumbai, Pune, Ahmedabad, and Dindigul (Jones, 2019: 440). About 500 women every year now avail themselves of the services of the BMMA's women's sharia *adalat* (Jones, 2019: 440).

The women's sharia court of the BMMA in Mumbai emerged out of a network of alternative dispute resolution forums in India that existed at the intersection of state and civil society in late 20th and early 21st century and included both religious and secular institutions. These forums were critical of the misogyny and patriarchy of formal judicial systems and community adjudication forums such as *dar-ul-qaza* run entirely by men (Vatuk, 2013: 84). These forums are cheap, alternative methods used by Muslim women to obtain a divorce when they cannot afford to go through the rigours of civil litigation in state courts.

Some examples of such women-only dispute resolution forums that cater to Muslim women are the women's courts (*mahila adalat*) founded by All-India Muslim Women's Personal Law Board in Lucknow in 2005, the women's power circle (*mahila shakti mandal*) sponsored by the NGO Women's Research Action Group (WRAG) in Mumbai, and the 'women's *jamat*' modelled on male-run *jamats* in mosques founded in Pudukottai, Tamil Nadu in 2003 (Vatuk, 2013: 89).

In fact, several members of the BMMA's women's sharia *adalat* were earlier members of the *mahila shakti mandal* in Mumbai. These forums use networks with the local police, civil society activists, lawyers, as well as other male *qazi* to resolve marital disputes of women including domestic violence, and non-payment of maintenance by husbands after divorce.

One prominent aspect of the activist mobilisations of the BMMA was the concerted effort to ban the cultural practice of oral, unilateral divorce popularly known as triple *talaq*. The BMMA and several other organisations representing Muslim women including Bebaak Collective, a secular Muslim women's organisation, and the Centre for the Study of Society and Secularism (CSSS), an organisation founded by reformist scholar Asghar Ali Engineer, led a campaign to get the Supreme Court to declare the practice of triple *talaq* unconstitutional (Mandal, 2018: 95). This movement was not just aimed at state institutions. It was accompanied by concerted campaigns in neighbourhoods and public spaces by members of the BMMA advocating against the practice (Interview, Noorjehan Safia Niaz, Mumbai, 9 October, 2017). On 22 August, 2017, a five-judge bench of the Supreme Court of India declared the practice of triple *talaq* illegal.⁸

While the judgment on the triple *talaq* was welcomed by all the petitioners and most Muslim women's organisations, a subsequent move to criminalise the practice by the ruling right-wing Bharatiya Janata Party saw a chasm within the

Muslim community (Punwani, 2016: 12). The BJP government's move to criminalise the practice of triple *talaq* needs to be understood within the context of the long-standing opposition of the Hindu right to the legal pluralist system of adjudication of religion-based personal laws in India (Menon, 2014; Menski, 2008). The Hindu right has for long advocated the implementation of a Uniform Civil Code to replace personal law systems based upon religion which they perceive as a form of minority appeasement (Menon, 2014: 481). The Hindu right's advocacy for criminalisation of oral, unilateral divorce squares with the image of the oppressed Muslim woman, a marker of regressive cultural practices of Muslim communities in the Hindu right's imaginary (Menon, 2014: 484). This proposed legislation was opposed by women's groups and civil society organisations such as the Bebaak Collective and the Centre for the Study of Secularism, who thought that the move was meant to target Muslim minorities. On the other hand, some women's groups felt that the law would act as a necessary deterrent to stop the practice of oral, unilateral divorce. The BMMA, along with the All-India Women's Muslim Personal Law Board, supported the legislation. This move has attracted some criticism of the BMMA's institutional position as being co-opted by the Hindu right (Agnes, 2017: 448).⁹

Enabling divorce

The female *qazi*, although not recognised formally by the state, exercised adjudicatory power in their neighbourhood. This section focuses on Khatun Shaikh, a female *qazi* who adjudicated marital disputes in the women's *sharia adalat* of the BMMA. She adjudicated cases of marriage, divorce, and maintenance. Thanks to her networks with the local police, lawyers, and civil society activists, and her popularity in the neighbourhood, her pronouncements on marriage and divorce carried weight. Shaikh often remarked that her aim was to bring about reconciliation between couples using the processes of mediation and arbitration.¹⁰ However, in practice, most of the cases ended up in a divorce. In these instances, Shaikh not only performed an adjudicatory function but also provided women with an opportunity to air their grievances openly and she acted as a counsellor for them. She helped women negotiate a divorce in marriages which seem damaged beyond repair. She helped in drawing up a *khula*, a form of divorce initiated by a woman. Within the framework of some Islamic legal schools and traditions, women are often required to forsake their dower (*mehr*) for their husbands to grant them a *khula*. Shaikh, however, managed to get the husband to pay for the maintenance and support of the wife and children in some instances. She also oversaw several instances of divorce by mutual consent (*talaq-e-mubarat*). The *qazi* used her local networks with the police, lawyers, and civil society activists to procure post-divorce maintenance, *iddat*, and *mehr* for the women when this seemed possible.¹¹ In her conversations with the spouses, the *qazi* stressed how these payments were compensation for women's domestic labour; she did not invoke any notions of paternalist charity by men. There was no valorisation of

the heterosexual family as such. She would often say to the women: 'If a couple cannot live in peace no one can use force to bring them together' (Mumbai, 9 January 2018)¹² ('*Jo ghar nahi bas sakta use koi zor zabardasti nahi basa sakta*').

Most women who approached the women's *sharia adalat* petitioned for a divorce (*khula/faskh*) and post-divorce maintenance. Men's pleas for divorce (*talaq*) were also admitted to this forum. In adjudicating cases of divorce, Shaikh tried to ensure that the woman received a lump sum as post-divorce maintenance as well as the *iddat*, and *mehr* that was due to her. But often this was not possible or was delayed because of the unwillingness of the husband to pay or the husbands' renegeing on their promises. In instances where Shaikh figured out that the husband was not interested in being with the wife, she privately advised the wife to get a divorce and move on with her life. Shaikh sought the help of a sympathetic male *qazi* in the neighbourhood to endorse her decisions.¹³ This did not negate her authority as such. In her conversation with litigants, Shaikh often said that the terms and conditions of the divorce as decided by Shaikh must not be altered by the male *qazi* or the litigants. The male *qazi*, as a sympathetic collaborator, was to merely endorse her decision. This was a mode of collaboration and gradual consolidation of her authority as a female *qazi*. During my fieldwork, as Shaikh became more well known as a *qazi*, she started issuing her own divorce certificates.

In cases where the husband deserted the wife or absconded, Shaikh helped them procure a *faskh-e-nikah* (a form of divorce that can be decreed by a *qazi* when the husband goes missing) from the *dar-ul-qaza* of the All-India Muslim Personal law Board.¹⁴ It is evident here that the institution of the family was a fragile unit and there was an acute sense of the possibility of its failure. At these points of failure, the emphasis was not on reconciliation or preservation of the marriage but rather on getting women a reasonable post-divorce maintenance. Maintenance payments were needed because of the economic precarity of divorced women and the limited opportunities they had for gainful employment because of their social location. These demands were not accompanied by any rhetoric about the sanctity of marriage or any paternalist assertion of the duty of the husband towards the wife.

The negotiations around an oral, unilateral divorce (known as triple *talaq* in popular parlance) pronounced by a husband followed a similar logic. In the highly politicised campaign against triple *talaq* carried out by the Hindu right, this practice is presented as a marker of the backwardness of Muslim minorities in India and Muslim women are considered in need of being saved from it (Punwani, 2016: 16). This rhetoric has informed the move by the Hindu right-wing BJP government to criminalise triple *talaq*. In the *shariat* court, these divorces were usually treated as a culmination of violent, unhappy marriages that women themselves wanted to wriggle out of. Shaikh helped women divorced in this manner with securing the post-divorce maintenance that was due to them where this was possible. Women who were divorced in this manner got the divorce certified by Shaikh in the *sharia* court without showing any eagerness to restore their marriage. In these instances, Shaikh would issue a divorce certificate on her letterhead as a *qazi* or send the

women to a neighbouring *qazi* to get a divorce certificate that officialised the end of the marriage. She would also act as a sympathetic counsellor and enable the woman and her family to negotiate the social stigma of divorce and move on with their lives.

I will now closely trace one such example of a case where a woman who had been recently divorced by her husband by an oral, unilateral divorce approached the women's *sharia adalat*. Ameena, a Muslim woman, who had been divorced by her husband by the method of an oral, unilateral divorce approached the *shariat adalat*. This case panned out in the backdrop of a national debate on the criminalisation of oral, unilateral divorce by the right-wing BJP government. Ameena complained that she used to be beaten up routinely by her husband and her in-laws. She demanded post-divorce maintenance for her and her child, *iddat*, and *mehr* but at the same time said that she did not want to stay with her husband anymore. During the hearing, Ameena appeared sad about the turn of events but she was firm that there was no point to reconciliation. She said at one point, 'What's the point of talking now? Everything is over' (19 December 2017, Mumbai).¹⁵

Responding to her allegations, her in-laws and her husband said that she did not fulfil her domestic duties as she often woke up late and did not help with any domestic chores. To this, Shaikh retorted, 'You complained that she wouldn't take care of you all [speaking to the in-laws]. Do you want her to be a servant or a daughter-in-law?'¹⁶

Ameena's parents expressed their worries and disappointment about the 'three words' (*triple talaq*) and the possible social stigma attached to the divorce. To this, Shaikh reassured them that they need not worry too much about the three words. She said, 'The issue is now the woman herself does not want to go back [to her in-laws' house]. We cannot force her into an agreement if she does not want it' (19 December 2017, Mumbai).¹⁷ At the same time, Shaikh chastised the husband for pronouncing triple *talaq*, a practice she felt was not in keeping with the Quranic values of compassion (*raham*).

In the divorce papers that were finalised by Shaikh, the occurrence of an oral, unilateral divorce was never mentioned. The divorce papers mentioned that the man divorced his wife using the method of irrevocable divorce (*talaq-e-bain*) in the presence of witnesses.¹⁸ The divorce was said to have occurred because of the inability of the couple to attempt a reconciliation. The post-divorce maintenance and the amount of *mehr* was specified in this document and it was agreed that this amount would be paid to the woman at the woman's *sharia adalat*.

In the ethnographic vignette, we see that Shaikh did not seek to preserve the institution of marriage. Following the pronouncement of divorce, the woman did not express any desire to get back together with her husband. In her interactions with Ameena, her family, and her in-laws, Shaikh only tried to create an enabling environment where Ameena could openly talk about the violence that she experienced at home and voice her demands. Shaikh also advised her parents against worrying too much about the social stigma around divorce. Shaikh critiqued

gendered kinship roles and the traditional gendered division of labour within the family as articulated by the in-laws. She took exception to the wife being framed by the in-laws as the person solely responsible for housework. Shaikh's adjudication resembles, as well as departs from, similar non-state alternative dispute resolution forums. Much like counsellors and activists in similar forums, Shaikh mobilised local networks with the police, lawyers, and civil society actors to procure economic relief for women (Heitmeyer and Unnithan, 2015; Kowalski, 2016; Lemons, 2019). However, unlike counsellors and activists in similar forums, Shaikh, in her adjudication of marital disputes, did not valorise the institution of the family and gendered kinship roles that constitute it as such. Several non-state alternative dispute resolution forums emphasize the importance of mediation and the preservation of the family when dealing with marital disputes. Heitmeyer and Unnithan, in an ethnography of a voluntary women's rights organisation ostensibly working on providing legal assistance on reproductive rights in Rajasthan, show how the staff, when dealing with a complaint by a woman against a family member, spent considerable time negotiating with both kin (the maternal and the natal family), community members, neighbours, and the local village council (*panchayat*) to come to a 'mutually acceptable solution' before filing a legal case on behalf of the woman (Heitmeyer and Unnithan, 2015: 384). Kowalski notes how female counsellors saw marital disputes as a function of 'household disorder'. They were only interested in reorganising hierarchical interdependencies that constituted the kinship structure of the family by emphasising an ethic of care between family members (Kowalski, 2016: 66). Hence, these counsellors restored family order and did not challenge the unequal relationship between the spouses or critique the institution of the family. Similarly, ethnographic research on male-run alternative adjudication forums such as *dar-ul-qaza* shows us how adjudication of marital disputes in these forums is premised upon a gendered division of labour in the family and a propensity to restore the institution of the heterosexual family and marriage (Lemons, 2019; Solanki, 2011). These forums privilege reconciliation of disputes and preservation of the family; divorce is usually seen by male judges as a last resort where repeated attempts at reconciliation have failed (Lemons, 2019: 84; Solanki, 2011: 278).

Shaikh's adjudication provides a lens to think through the highly politicised campaign in India around the practice of oral, unilateral divorce. The Hindu right has often selectively invoked this practice as an example of regressive cultural practices of Muslim minorities in India (Punwani, 2016: 16). The image of the oppressed Muslim woman who is a victim to this cultural practice is often mobilised for strategic political gains (Punwani, 2016: 16). The BMMA's own campaign against triple *talaq* calls for stringent state laws to criminalise the practice. In the ethnographic vignette, we see an altogether different kind of negotiation taking place around this practice. It is a culmination of a marriage that is damaged beyond repair, and hence can only end in a divorce. Hence, Shaikh facilitated some monetary reliefs for the woman and advised her to start her life anew. Shaikh's adjudication of the case of oral, unilateral divorce was informed by an

awareness of the violence endemic to the heterosexual family and the possibility of its failure.

Imperilled maintenance

Shaikh often adjudicated maintenance claims of Muslim women who had been divorced. In family law provisions, maintenance is premised on the imaginary of gendered kinship roles in the heterosexual family with the man as the provider and the woman as the recipient of maintenance (Halley and Rittich, 2010: 754). In contrast, the adjudication of maintenance claims in the women's *sharia* court was shot through with the possibility of failure and reversal of these roles. Men often failed to fulfil maintenance claims. In these instances, women merely wanted a swift end to their marriages. In some instances, they were open to or already working as breadwinners for the family in a reversal of gendered kinship roles. In this section, I will dwell upon two cases that highlight this phenomenon.

The malleability of gendered kinship roles and the possibility of their failure can be traced by following the changing tone and tenor of pleas of women litigants to the women's *shariat* court. The case of Nasreen illustrates this phenomenon. Nasreen had not finished high school. Her husband worked as a *zari* (a kind of embroidery art) worker. Nasreen's husband had approached the *sharia adalat* and asked for a divorce. He alleged that she kept fighting with her – hence, he did not want to be with her. When Nasreen was summoned to the *adalat*, she claimed that her husband routinely beat her up and did not provide for her children (7 December 2017, Mumbai).¹⁹ She spoke in a despondent tone and came across as a helpless wife who had not been provided for by her husband. She said that she was ready to stay with him if he provided adequately for her and her children. The husband, however, wanted a divorce and wanted custody of the children. At this stage, Shaikh, the female *qazi*, asked the husband to be kind and compassionate and provide for the wife and the children. She invoked kindness and compassion as values of the *Quran*. She emphasized that the man was a pious person (*namazi*) and that, as Allah's follower (*banda*), he should be kind as Allah was kind. The husband, however, was insistent on his demands for a divorce. He also demanded custody of the children.

When it was obvious that a reconciliation was not imminent, Nasreen changed her tone and asked for custody of her children. She became assertive. She spoke in a determined tone and asserted that she could take up any odd job and fend for her children and that she was not ready to part with her children.

A few days later, the man arrived at the *sharia adalat* and declared that he had lost his job and hence was unable to provide for his children. He still had no intention of being with his wife. Nasreen said that she was ready to work as a domestic help and support the children. At this stage, Shaikh advised Nasreen to get a divorce (*talaq-e-mubarat*), demand some post-divorce maintenance, *iddat* and *mehr* and carry on with her life.

In this ethnographic vignette, we see how Nasreen initially inhabited the role of a wife within the gendered economy of the heterosexual family and expected her husband to provide for her and her children. She spoke in a despondent tone when these demands were not met. When it was obvious that her husband was not willing to be with her, she was ready to be the breadwinner and provide for her children. She was not willing to hand over the custody of the children to her husband. During the hearing, she became assertive, emphatic, and determined in the articulation of her claims.

Shaikh initially invoked the message of compassion in the *Quran* and urged the husband to be with her and provide for her. But when this strategy failed, she advised Nasreen to get a divorce and move on in life. We see how the negotiations on maintenance are shaped by the possibility of the failure of the husband as the provider within the structure of the heterosexual family. This awareness is evinced by both the changing roles of women with respect to their expectations from the traditional kinship structures of the heterosexual family and the adjudication and counselling of the woman *qazi*. At these points of failure, traditional gendered kinship roles are destabilised and women articulate the possibility of new ones. Nasreen expressed willingness to work and provide for her children to claim custody of them. Shaikh initially implored the husband to provide for his family but when the demise of the family was imminent, she counselled Nasreen to ask for a divorce, some monetary reliefs, and move on with her life.

In the women's *sharia adalat* run by the BMMA, a more malleable construction of gendered kinship roles in the heterosexual family can be discerned compared to both male run *dar-ul-qaza* (Lemons, 2019) and other secular alternative dispute resolution forums (Basu, 2012) studied by anthropologists recently. Basu and Lemons have shown how alternative dispute resolution forums are shaped by the state's gendered logic of regulating the family. In an ethnography of family courts in Kolkata, Basu notes that counsellors enacted broader social norms and inscribed the 'reconciled family as an optimal economic, emotional, and spatial solution, and violence as a bad habit to be eradicated by appropriate counsel' (Basu, 2012: 481). Similarly, Lemons observed how women performed the gendered kinship role of an obedient wife to be able to procure a divorce in the *dar-ul-qaza* in Delhi (Lemons, 2019: 89).

My study of the negotiations in the women's *sharia adalat* also speak to the findings of ethnographic scholarship on mediation of marital disputes in alternative dispute resolution forums that show how kinship networks and ideologies shape mediation processes (Grover, 2009; Heitmeyer and Unnithan, 2015; Kowalski, 2016). However, I also carefully trace how gendered kinship roles are reconceptualised in these forums by women as they navigate points of crisis in the gendered heterosexual family. The epistemic universe of this forum, inspired by an everyday Islamic feminist ethic that does not ostensibly valorise the institution of heterosexual marriage as such, also shapes this reconceptualisation of gendered kinship.

In the case of Perveez, we see a similar reversal of gendered kinship roles. Perveez worked as a domestic help when she approached the *sharia adalat*. She claimed that she had been troubled by the harrowing experience of domestic violence. She insistently pleaded with the *qazi* that all that she wanted was to get rid of her husband (*chutkara*) in the form of a divorce (*khula*). In her passionate pleas, she said, 'I have been frustrated for 5 years now. I just want *chutkara* from my husband. Nothing else' (24 November 2017, Mumbai).²⁰

She wanted a divorce and was not bothered about post-divorce maintenance as she was already working at the time as a domestic help. She claimed that her husband was an alcoholic and never went to work. She worked to support the children. During Perveez's visits to the court it did not seem like she particularly cherished the role of a mother. This could partly be a function of her feeling overburdened as the sole provider in a family where she had been very poorly treated. In fact, on one occasion, during a quarrel with her husband at the court, she pushed one of her children towards the husband saying that she had had enough of him.

During the hearing of this case in the *sharia adalat*, Shaikh asked her if she would like to give her husband a second chance. Perveez rejected this possibility. Shaikh then took her aside in a corner of the room and had a one-on-one conversation with her. She asked her where she would like to stay. It was decided that Perveez could stay with her mother. The husband, in this instance, did not want a divorce. But Shaikh told him that he could not be forceful (*zabardasti*) if she did not want to stay with her. There was a dispute about maintenance for Perveez's children. At this point, Shaikh advised her to part with the children if he wanted to take care of them: 'Give away the children if he wants them. Start your life afresh' (26 February 2018, Mumbai).²¹ Shaikh's advice to Perveez to part with her children needs to be understood in the context of Perveez's own relative indifference to her children.

In the next few months, her husband was summoned multiple times to the *shariat adalat*. He said that he wanted to be with her. But Perveez did not budge from her initial resolve of getting divorced. I saw her coming in every day in the morning to clean the office space. She later got quite actively involved with the activist work of the BMMA.

As the case dragged on and remained unresolved, Perveez started working as a cleaner in the office of the *shariat adalat* in addition to her other regular commitments. Women who approached the *shariat adalat* with cases eventually got involved with the work of the *adalat* and the BMMA.

In this ethnographic vignette we see that Perveez approached the *sharia adalat* to get rid of her husband. She was already a working woman and was not bothered about maintenance from the husband. During the hearing, Shaikh only wanted to make sure that Perveez had a place to stay after the end of her marriage. Perveez returned to her natal home. This kind of a negotiation disrupts the notion of the gendered heterosexual family as a space of comfort and succour for women. Neither Shaikh nor Perveez were interested in the latter getting back together

with her husband. Instead, they negotiated an arrangement whereby her physical and economic security would be ensured in the natal home. As she parted ways with her husband and left her marital home, Perveez found a new residence in her natal home and discovered a new vocation as cleaner in the office and then as an activist with the BMMA. This shows how new imaginaries of gendered kinship are produced in the women's *sharia adalat* during the adjudication and mediation conducted by the female *qazi*. The wife found a new home. This home was different than the marital home located within the gendered imaginary of the heterosexual family. She also discovered a vocation as a woman activist that is different from the role of the wife within the institutional framework of the heterosexual family. In these ethnographic vignettes, I have explored how women reconfigure gendered kinship roles during adjudication of their cases in the *sharia adalat*. The negotiations of kinship in this forum speak to the ways in which kinship ideologies shape processes of mediation in secular alternative dispute resolution forums (Grover, 2009; Kowalski, 2016). In contrast to this literature, my work is more attentive to the malleability of gendered kinship roles and their reconfiguration by women in alternative dispute resolution forums.

BMMA's legislative agenda

In addition to running women's *sharia* courts in various parts of India, activists of the BMMA also demand the codification and standardisation of Muslim personal law in India. With respect to marriage, divorce, and maintenance, the draft Bill of the BMMA proposes more state intervention. The draft was formulated by activists of the BMMA after about six years of consultation with women's associations, Muslim women's groups, lawyers, and activists (Interview, Noorjehan Safia Niaz, Mumbai, 17 October, 2017). The contrast between the statist legal reform agenda, and the local-level adjudication of marital disputes is the starkest in the case of the oral, unilateral divorce. The BMMA has been at the forefront of a movement to declare the oral, unilateral divorce unconstitutional. At the heart of the mobilisation around the oral, unilateral divorce is the image of the Muslim woman oppressed by this cultural practice. To this extent, there is some overlap between the symbolic use of the Muslim woman by this campaign and the right-wing agenda of the Hindu nationalist Bharatiya Janata Party (Punwani, 2016: 16).²² Following the decision of the BJP government to criminalise oral, unilateral divorce, the BMMA supported this move as a necessary deterrent to stop the malpractice of oral, unilateral divorce even while other Muslim women's groups protested against it as a right-wing tactic to further victimize Muslim men (Punwani, 2018: 16). The BMMA's campaign is informed by an attempt to make male-initiated oral, unilateral divorce more difficult and to restore women to their rightful place in the gendered heterosexual family. In contrast, the negotiations between the women *qazi* and the litigants in the women's *sharia* court, triple *talaq* is construed as a culmination of violent, unhappy marriages. In the *sharia* court, there is an attempt by the *qazi* and the activists of the BMMA to

create spaces where women can talk about the violence experienced in the family and eventually escape from it. There is no attempt to restore women to the institution of the family. The cases of triple *talaq* are cases where the possibility of the restoration of these families seemed distant and would only have exposed the women to further violence.

About the same time that cases such as Ameena's were adjudicated in the *sharia adalat*, members of the BMMA expressed their approval to statutorily prohibit the practice of the triple *talaq*. In fact, Khatun Shaikh, the woman *qazi*, herself said in a meeting of the BMMA activists, 'For how long will poor women keep approaching us with issues of *talaq*? Will we keep running such *adalat* forever? At some point, this [prohibition of triple *talaq*] must become the law. At some point, people like us [Muslim women] need to be involved in law-making' (7 November 2017, Mumbai).²³

A similar tension can be discerned between the provisions for maintenance in the draft bill of the BMMA, and the frequent failure of maintenance claims in the everyday life of the women's *sharia adalat*. In the draft Bill of Muslim personal law popularised by activists of the BMMA, maintenance is defined as an 'entitlement to food, clothing, residence, educational, and medical expenses and all other personal expenses to be provided by the husband' in accordance with his economic status (BMMA, 2017: 22). In the adjudication and negotiation on marriage and divorce, this structure of the conjugal family is construed as fragile by the woman litigants and the *qazi*. Urban, working-class Muslim women who frequent these courts have limited employment prospects due to the lack of a formal education and limited employable skills.²⁴ This makes marriage and gendered roles within the heterosexual family the only available route for subsistence. Hence, the women *qazi* try to secure economic relief in the form of post-divorce maintenance, *mehr*, and *iddat* for divorced women. But they are also aware of the possibility of failure of these claims, and hence the unreliability of the institution of marriage as a source of sustenance. The BMMA's official position situates concerns of women's economic justice within the framework of the heterosexual family which only reifies women's gendered roles within the family as recipients of maintenance. This shows how struggles of gender justice for women in India remain circumscribed by the lack of economic justice. As Lemons has argued, relying only on husbands for supporting Muslim women does not address broader questions of women's economic opportunities (Lemons, 2017: 199). Writing about alternative dispute resolution forums in Rajasthan, Heitmeyer and Unnithan observe that women counsellors often emphasised mediation as opposed to litigation because women lack the 'economic and social resources' to live independently as single or divorced women (2015: 385).

The BMMA's legislative agenda for legal reform echoes the ideology of 'family law exceptionalism' whereby the regulation of the private sphere of the family by states is suffused with normative conceptions of the family as nurturing 'affective, altruistic, social-ordering, and/or sacred' relationships (Halley and Rittich, 2010: 754). The normative claims of family law function as a disciplinary apparatus as

they influence legal codes, case law, and understandings of gender and sexuality (Halley and Rittich, 2010: 754). Basu has noted problems with the conception of women within the economy of the gendered family. She notes that 'gendered vulnerabilities' are produced through conjugality as marriage secures 'heterosexual privilege' for women but also entraps her in 'cycles of violence and impoverishment' (Basu, 2012: 471).

This schema of locating the maintenance for women within the heterosexual family in the institutional discourse of the BMMA resonates with the state's paternalist adjudication of the Muslim family. Lemons analyses judgments on post-divorce maintenance in the Supreme Court and the High Courts in India to show that the courts formulated maintenance demands in terms of the duties of the husband towards the wife (Lemons, 2017: 199). Lemons argues that the state courts, by forcing husbands or the Muslim community to support women preserve paternalistic family structures, reify a 'Muslim community as separate', and shy away from 'broader questions of gender justice and women's economic opportunities' (Lemons, 2017: 199).

Conclusion

This paper has offered an ethnographic analysis of the everyday social life of divorce and maintenance in a women's *sharia adalat* run by activists of the BMMA and traced the tension between the statist agenda of legal reform, and the everyday negotiations on gendered kinship and the family in the women's *sharia* court of the BMMA. My ethnographic exploration shows how the social life of the law eludes the statist, institutionalist logic of Islamic feminist movements. My intervention, hence, qualifies the excessive focus on legal, institutionalist aspects of Islamic feminist movements in current scholarship (Jones, 2019: 441; Mir Hosseini, 2019: 108; Vatuk, 2013: 358). Instead, I argue for taking seriously the range of everyday negotiations with the law that are made possible by activists of the movement. My aim here is to bring out the tensions that animate these movements and thereby qualify an uncritical celebration of these movements as arbiters of gender equality. In doing so, I have advanced the critical work of Abu-Lughod where she draws attention to the complex politics of representation of these movements that are often led by cosmopolitan, middle-class Muslim elites who claim to speak on behalf of Muslim women (Abu-Lughod, 2013). Using the Indian context, I have shown how the multiple spaces and activities of these movements inhere in quite distinct ways of thinking about gender and state regulation of the family.

This paper also speaks to the scholarship that traces how kinship ideologies and networks shape mediation of marital disputes in alternative dispute resolution forums (Grover, 2009; Kowalski, 2016). I further this scholarship by paying careful attention to women's gradual reconceptualisation of gendered kinship roles in these forums as also the epistemic universe of this forum that allows for the articulation of these novel kinship roles. The ethnographic vignettes show how that, unlike some other alternative dispute resolution forums (Basu, 2012; Heitmeyer and Unnithan, 2015; Kowalski, 2016; Lemons, 2019), there is no ostensible

valorisation of the institution of marriage and gendered kinship roles in the family as such in the everyday functioning of the women's *sharia* court. The emphasis is not on restoring the family and familial order but rather on getting women some economic security while facilitating the demise of unhappy marriages. My ethnographic findings also present a contrast to adjudication in male-led, alternative, dispute-resolution forums where male *qazi* emphasise repeated attempts at reconciliation before pronouncing a divorce (Lemons, 2019; Solanki, 2011).

Acknowledgements

I would like to thank the editor and the two anonymous reviewers for their insightful comments and suggestions. I am grateful for critical feedback on earlier versions of this paper from Iza Hussin and Saumya Saxena. I am also grateful to Romit Chowdhury for helpful comments on restructuring an earlier iteration of the paper. I am grateful to all members of the BMMA for their time and generosity. I remain awed by the resilience and courage of women litigants who I met during my fieldwork and whose lives were a motivation for writing this paper. All errors remain mine.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: The fieldwork for this paper was undertaken during my doctoral studies at the University of Cambridge which was supported by the Gates Cambridge scholarship. Additional funding for fieldwork was received from the fieldwork fund of the University of Cambridge.

ORCID iD

Sagnik Dutta  <https://orcid.org/0000-0002-8719-8296>

Notes

1. It might be worth clarifying here that the *sharia adalat* are really alternative dispute resolution forums that are not formally recognised by the state yet constitute an important avenue for the adjudication of marital disputes for Muslim women in India. I use the word court occasionally in this article for the purposes of convenience but it is important to clarify that these institutions are alternative dispute resolution forums. Broadly speaking, *sharia* can be defined as the moral, ethical ideal that constitutes the domain of Islamic law. Wael Hallaq defines the *sharia* as the 'hermeneutical, conceptual, theoretical, practical, educational, institutional system' that defines attempts to discover God's moral will (Hallaq, 2012: 11). For a more detailed conceptual and historical analysis of *sharia* see Wael Hallaq (2009, 2012).

2. The Indian state uses a plural legal system to adjudicate marriage, divorce, and maintenance concerns of Muslim women. This system includes statutory Muslim personal law adjudicated by civil and family courts. The statutes that govern the Muslim family are the Muslim Personal Law (*Shariat* Application) Act 1937, Dissolution of Muslim Marriages Act 1938, Muslim Women's (Protection of Rights on Divorce) Act 1986, Muslim Women's (Protection of Rights on Marriage) Act 2019. But at the same time, a range of alternative dispute resolution forums, including *dar-ul-qazas* (alternative dispute resolution forums run by male *qazi*), women's *panchayats* (community forums), and newly founded women's *sharia* courts, are also engaged in adjudication of marriage, divorce, and maintenance claims. Their authority is recognised by men and women in predominantly Muslim neighbourhoods. Often their decisions are relied upon by state courts as well though the state does not officially recognise them. These forums act as a cheap, affordable means for settling marital disputes in a country where access to formal litigation is cumbersome and often determined by gender, religion, and caste.
3. The *hadiths* are the sayings of the Prophet. The *fiqh* tradition refers to law schools in Islamic jurisprudence which evolved their own understanding of the *Quran* and *hadith* based on the judgments of particular jurists.
4. In a provocative article, Mahmood argues that there is considerable overlap between reformist movements in Islam and the American appropriations of the figure of the oppressive Muslim woman to legitimise neo-imperial projects in the Middle East. This is an important critique, but this is not the line of enquiry that I pursue in this article.
5. Grover observed how women in 'arranged' marriages received emotional support from their natal kin during a marital dispute. At points of crisis in the marriage, women would often be supported by their mothers who would even actively prevent any mediation of the marital dispute in some instances and encourage daughters to stay with the natal family.
6. These movements are markedly different than the piety movement in Egypt for instance that Saba Mahmood writes on in her important book, *Politics of Piety*.
7. In India, marriage, divorce, and maintenance claims of Muslims are governed by Muslim Personal Law. Muslim Personal Law includes statutory legislation such as the Muslim Personal Law (*Shariat* Application) Act 1937, the Dissolution of Muslim Marriages Act 1939, the Muslim Women's (Protection of Rights on Divorce) Act 1986, and the newly enacted controversial the Muslim Women's (Protection of Rights on Marriage) Act 2019. The governance of Muslim personal law is divided between state and non-state authorities such as *dar-ul-qazas* that are usually run by male *qazi*. Though the state does not accord formal recognition to these alternative dispute resolution forums, their pronouncements are often accepted as legitimate proof of marriage and divorce in state courts that adjudicate marriage and divorce of Muslim families (Jones, 2019). The *qazi* of the BMMA work within this framework of what political scientist Gopika Solanki terms 'shared adjudication' between state and non-state forums in India (Solanki, 2011: 41). This means that the marriage and divorce of Muslim families can be adjudicated by both family, and civil courts as well as non-state adjudication forums – though they are not granted official, legal recognition by the state – such as local jamaats, organisations run predominantly by male *qazis* whose adjudication builds upon the *fiqh* tradition (*dar-ul-qaza*), and local community councils (*panchayat*) (Jones, 2019; Vatuk, 2013).
8. The three judgments that constituted the Supreme Court's verdict in this case cited very different reasons for their verdict. The judges did not agree on the question of the constitutionality of the practice. The finer nuances of this complex judgment were often lost in its representations in the popular press as 'banning' triple *talaq*. The order authored by

Justices Rohinton Nariman and UU Lalit declared the practice of triple *talaq* unconstitutional. They reasoned that the practice of triple *talaq* came under the purview of 'law' after the enactment of the Muslim Personal Law (Shariat) Application Act 1937, and that both codified and uncoded Muslim personal law were subject to the fundamental rights provisions of the Constitution. Justice Kurian Joseph on the other hand relied on Quranic verses and an earlier judgment of the Supreme Court to rule that triple *talaq* did not have any legal validity but avoided the issue of constitutionality of triple *talaq*. Hence, the judgement, though hailed as a progressive intervention in personal laws, left key questions about constitutionality of personal law provisions unanswered. For a detailed and extremely perceptive analysis of the judgment see Mandal (2018)).

9. For a detailed account of the debates around Muslim women's movements against oral, unilateral divorce see Jyoti Punwani (2016); For the mixed responses to the proposal to criminalise Triple Talaq, see Jyoti Punwani (2018).
10. There is a long tradition of Islamic dispute resolution sanctioned by the Quran which includes arbitration (*tahkim*) and mediation (*wasatah, sulh*).
11. *Mehr* is a dower available to the bride in a Muslim marriage. *Mehr* is usually required to be paid by the husband at the time of the marriage but in practice its payment is often deferred. This provides some financial security for women at the time of divorce. The *iddat* period refers to a period of rest of about three months after the divorce. Men are expected to provide for women during this period according to most schools of Muslim law. There is an elaborate legal framework available to divorced Muslim women who seek to claim maintenance from their husbands under the Muslim Women's (Protection of Rights to Divorce Act), 1986. Section 3(1) (a) of this Act mandates that the husband pay a 'reasonable' and 'fair provision' and maintenance to the wife during the *iddat* period.
12. Fieldnotes.
13. The male *qazi* had been trained in Dar ul Uloom Deoband, a renowned Islamic seminary in north India which has traditionally trained men in the Hanafi Sunni legal tradition. The domain of alternative dispute resolution of Muslim law has traditionally been dominated by men. Hence, the female *qazi* had to rely to some extent on support from sympathetic male *qazi*. However, this was a gradual process of collaborative contestation. She gradually became more assertive about her authority as a male *qazi*.
14. Shaikh relied on the male *qazi* of the AIMPLB only in instances where she had exhausted all options and still failed to get the husband to come to the women's sharia court. This process went hand in hand with her proclamation of her authority as a female *qazi* in the neighbourhoods where the BMMA worked.
15. Fieldnotes
16. Fieldnotes
17. Fieldnotes.
18. Talaq-e-Bain papers. Reference No. – 20324/ 2018; Date: 27.01.2018.
19. Fieldnotes.
20. Fieldnotes.
21. Fieldnotes.
22. Though I do not want to argue that this is a clear case of 'appropriation' of activists of the BMMA by the right-wing government. In fact, the endurance of creative modes of adjudication of oral, unilateral divorce cases in the women's *shariat adalat* of the BMMA only goes to show how the legal pluralist architecture of the Indian state allows the thriving of multiple modes of negotiating gender for working class Muslim women.
23. Fieldnotes.

24. A perusal of the BMMA's sharia court register shows that most women who frequent the courts are not trained beyond high school. Several of them are homemakers at the time they approach the court.

References

- Abu-Lughod L (2013) *Do Muslim Women Need Saving?* Cambridge: Harvard University Press.
- Agnes F (2017) Triple Talaq-gender concerns and minority safeguards within a communalised polity: Can conditional nikahnama offer a solution. *NUJS Law Review* 10(3): 427–450.
- Anwar Z (ed.) (2009) *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Sisters in Islam.
- Basu S (2012) Judges of normality: Mediating marriage in the family courts of Kolkata, India. *Signs: Journal of Women in Culture and Society* 37(2): 469–492.
- BMMA (Bharatiya Muslim Mahila Andolan) (2017) *Muslim Family Law, 2017: Draft for the Bill*. Belgaum: Omega Publications.
- Grover S (2009) Lived experiences: Marriage, notions of love, and kinship support amongst poor women in Delhi. *Contributions to Indian Sociology* 43(1): 1–33.
- Hallaq W (2009) *Sharia: Theory, Practice, Transformations*. Cambridge: Cambridge University Press.
- Hallaq W (2012) *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. New York: Columbia University Press.
- Halley J and Rittich K (2010) Critical directions in comparative family law: Genealogies and contemporary studies of family law exceptionalism: Introduction to the special issue on comparative family law. *American Journal of Comparative Law* 58(4): 753–776.
- Heitmeyer C and Unnithan M (2015) Bodily rights and collective claims: The work of legal activists in interpreting reproductive and maternal rights in India. *Journal of the Royal Anthropological Institute* 21(2): 374–390.
- Jones J (2019) 'Where only women may judge': Developing gender-just Islamic Laws in India's All-Female 'shari'ah courts. *Islamic Law and Society* 26(4): 437–466.
- Kowalski J (2016) Ordering dependence: Care, disorder, and kinship ideology in North Indian anti-violence counseling. *American Ethnologist* 43(1): 63–75.
- Lemons K (2017) Paying for kinship: Muslim divorce and the privatization of insecurity. *History of the Present* 7(2): 197–218.
- Lemons K (2019) *Divorcing Traditions: Islamic Marriage Law and the Making of Indian Secularism*. Ithaca: Cornell University Press.
- Mahmood S (2006) Secularism, hermeneutics, and empire: The politics of Islamic reformation. *Public Culture* 18(2): 323–347.
- Mahmood S (2012) *Politics of Piety: The Islamic Revival and the Feminist Subject*. New ed./with a new preface by the author. Princeton: Princeton University Press.
- Mandal S (2018) Out of Shah Bano's shadow: Muslim women's rights and the Supreme Court's triple talaq verdict. *Indian Law Review* 2(1): 89–107.
- Menon N (2014) A Uniform Civil Code in India: the state of the debate in 2014. *Feminist Studies* 40(2): 480–486.
- Menski W (2008) The Uniform Civil Code Debate in Indian Law: New developments and changing agenda. *German Law Journal* 9(3): 211–250.

- Mernissi F (2003) *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society*. London: Saqi.
- Mir-Hosseini Z (2015) Muslim legal tradition and the challenge of gender equality. In: Hosseini ZM, Al-Sharmani M and Rumminger J (eds) *Men in Charge: Rethinking Authority in Muslim Legal Tradition*. London: Oneworld, pp.13–43.
- Mir-Hosseini Z (2019) The challenges of Islamic Feminism. *Gender a Výzkum / Gender and Research* 20(2): 108–122.
- Niaz NS (2016) *Women's Shariah Court, Muslim Women's Quest for Justice*. Chennai: Notion Press.
- Punwani J (2016) Muslim women historic demand for change. *Economic and Political Weekly* 51(42): 12–15.
- Punwani J (2018) Triple Talaq judgement and after. *Economic and Political Weekly* 53(17): 12–16.
- Ramberg L (2013) Troubling kinship: Sacred marriage and gender configuration in South India. *American Ethnologist* 40(4): 661–675.
- Ramberg L (2017) Who and what is sex for? Notes on theogamy and the sexuality of religion. *History of the Present* 7(2): 175–196.
- Redding J (2020) *A Secular Need: Islamic Law and State Governance in Contemporary India*. Seattle: University of Washington Press.
- Solanki G (2011) *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India*. Cambridge Studies in Law and Society. Cambridge: Cambridge University Press.
- Tellis A (2014) Multiple ironies: Notes on same-sex marriage for South Asians at home and abroad. In: Kaur R and Palriwala R (eds) *Marrying in South Asia: Shifting Concepts, Changing Practices in a Globalising World*. New Delhi: Orient Blackswan, pp.271–292.
- Tschalaer MH (2017) *Muslim Women's Quest for Justice: Gender, Law and Activism in India*. Cambridge: Cambridge University Press.
- Vatuk S (2013) Islamic feminism in India: Indian muslim women activists and the reform of Muslim Personal Law. In: Osella F and Osella C (eds) *Islamic Reform in South Asia*. Cambridge: Cambridge University Press, pp.346–382.
- Wadud A (2015) The ethics of Tawhid over the Ethics of Qiwamah. In: Mir-Hosseini Z, Al-Sharmani M and Rumminger J (eds) *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. London: Oneworld, pp.256–274.